

EPA PREPARED THESE FREQUENTLY ASKED QUESTIONS AND ANSWERS TO ASSIST POTENTIAL APPLICANTS FOR BROWNFIELDS GRANTS. PLEASE REVIEW THE FISCAL YEAR 2007 GRANT PROPOSAL GUIDELINES PUBLISHED IN OCTOBER 2006 WHEN PREPARING YOUR PROPOSAL. IF THERE IS A CONFLICT BETWEEN THE ANSWER TO A QUESTION AND THE STATUTE, REGULATION, OR THE GUIDELINES, THE STATUTE, REGULATION OR THE GUIDELINES TAKE PRECEDENCE.

Brownfield Grant Guidelines  
Frequently Asked Questions (FAQ)

## **I. Definitions and Grant Eligibility**

### **A. Definitions**

#### ***Q1. What is a Brownfields Site?***

A1. For the purposes of EPA's Brownfields grant program, a "Brownfields Site" is: "...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." In order to be eligible for Brownfields grant funding, the site(s) covered by your application must meet the definition of a Brownfield site.

Brownfield sites also include, but are not limited to, three specific types of properties eligible for funding:

- sites contaminated by petroleum or a petroleum product;
- sites contaminated by controlled substances; and,
- mine-scarred lands.

Some sites are excluded from the definition of a Brownfield site, though many of these may be eligible if EPA makes a "property- specific funding determination" that allows grant funds to be used at that site. This process is explained in Appendices 3 and 4 of the Brownfields grant proposal guidelines.

For a more detailed discussion of Brownfields sites eligible for funding, please refer to the Appendices of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants on the EPA website at:

<http://www.epa.gov/oswer/grants-funding.htm#epa-oswer-obcr-07-01>

#### ***Q2. How does EPA interpret "non-profit organization" and how can such organizations participate in brownfields revitalization under the new amendments?***

A2. For the purposes of the brownfields grant program, EPA will use the definition of non-profit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107, 31§ USC 6101, Note.

This law defines non-profit organizations to mean any corporation, trust, association, cooperative, or other organization that:

1. is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
2. is not organized primarily for profit; and
3. uses net proceeds to maintain, improve, or expand the operations of the organization."

EPA will accept documentation from the U.S. Internal Revenue Service (e.g. 501(c)(3) tax exempt status) or from a State or tribal government that has authority under its laws to grant non-profit status to an organization.

Non-profit organizations, with the exception of organizations subject to section 501(c)(4) of the Internal Revenue Code that lobby, are eligible to receive cleanup grants and subgrants under Revolving Loan Fund (RLF) capitalization grants. Non-profit organizations are also eligible to receive job training grants. Private nonprofit educational institutions are eligible to compete for these grants.

See the Proposal Guidelines for Brownfields Job Training Grants for further information ([www.epa.gov/brownfields](http://www.epa.gov/brownfields)).

Non-profit organizations are not eligible to receive brownfields assessment or RLF grants under 104(k)(2) and 104(k)(3), respectively .

## **B. Eligibility and Ineligibility**

### ***Q3. Who is eligible to apply for the grants?***

A3. The Brownfields law defines entities eligible to receive grants, based on the type of grant requested:

- **assessment and revolving loan fund grants** - state, local, and tribal governments, with the exception of Indian tribes in Alaska, as well as a range of government entities, including a general purpose unit of local government or land clearance authority or other quasi-governmental entity operating under the control, supervision, or as an agent of a local government, a governmental entity or redevelopment agency created or sanctioned by a State, or a regional council of governments, are eligible. An Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community are eligible.
- **cleanup grants** - include those eligible governmental entities identified above as well as non-profit organizations and non-profit educational institutions. (Please see Q2 for EPA's definition of a non-profit organization that applies to this program.) All eligible entities, including non-profit organizations, must have sole ownership of the site and provide documentation to demonstrate ownership (e.g. copy of the fee simple title) by June 30, 2007.
- **job training grants** - include those eligible governmental entities identified above as well as non-profit organizations, including non-profit educational institutions.
- For-profit organizations are not eligible for Brownfields grant funding from EPA.

### ***Q4. What sites are not eligible for property-specific funding determinations for Brownfields grants?***

A4. The Brownfields Law excludes the following three types of properties from funding eligibility and prohibits EPA from making property-specific determinations on these properties:

1. Facilities listed (or proposed for listing) on the National Priorities List (NPL);
2. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued to or entered into by parties under CERCLA; and

3. Facilities that are subject to the jurisdiction, custody or control, of the United States government. (Note: Land held in trust by the United States government for an Indian tribe is **eligible** for brownfields funding.)

***Q5. Are properties on lands held in trust by the Federal government for Indian tribes eligible for brownfields grant funding?***

A5. Generally, properties on lands held in trust by the Federal government for Indian tribes are eligible for brownfields grant funding. You should contact your Brownfields coordinator for further information.

***Q6. What happens if I accidentally include an ineligible site in my proposal or I didn't realize I needed a property-specific funding determination?***

A6. Applicants may not substitute sites if EPA determines a site is not eligible. EPA may provide applicants a limited opportunity to clarify site eligibility issues during the proposal application process. If EPA has reason to believe a site that falls in the "excluded" category is eligible for a property-specific funding determination, EPA may seek clarification from the applicant before making that determination. EPA strongly encourages applicants to evaluate their site against the information provided in Appendices 3 and 4 of the guidelines. In addition, applicants should contact their Regional Brownfields Coordinators for pre-application assistance on site eligibility.

Applicants may not substitute sites if EPA determines a site is not eligible.

***Q7. How do I know if I need to apply for a property-specific funding determination?***

A7. A list of the types of sites that are only eligible for Brownfields funding via a property-specific determination is provided in the statute and Appendices 3 and 4 of the Brownfields grant proposal guidelines. Grant applicants must determine if any properties, or facilities, included in their proposal require a property-specific funding determination, and then provide EPA with the information necessary to make this determination.

EPA makes property-specific funding determinations based on whether the grant will protect human health and the environment, **and** either promote economic development or enable the creation, preservation or addition of parks, greenways, undeveloped property, recreational property, or other property used for non-profit purposes.

Applicants should review the list of sites eligible for a property-specific determination in Appendices 3 and 4 of the Guidelines (<http://www.epa.gov/oswer/grants-funding.htm#epa-oswer-obcr-07-01>) and contact your EPA Regional Brownfields Coordinator if you have further questions regarding property-specific funding determinations.

***Q8. Are RCRA sites eligible for Brownfields grant funding?***

A8. Some Resource Conservation and Recovery Act (RCRA) sites may be eligible. RCRA facilities that may be eligible for Brownfields funding, (subject to meeting all other Brownfields grant eligibility requirements), include:

- RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
- RCRA interim status facilities that are subject to administrative or judicial orders or consent decrees that do not include corrective action requirements or any other cleanup

- provisions (e.g., RCRA 3008(a) orders without provisions requiring the owner/operator to address contamination); and
- Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order to conduct corrective action.

Facilities with permits issued under the authorities of RCRA, Toxic Substances and Control Act (TSCA), and the Safe Drinking Water Act (SDWA), as well as facilities with permits issued under section 1321 of the Clean Water Act (the oil and hazardous substance liability provisions) are excluded from the definition of brownfield site but **may be eligible for funding if the EPA makes a property-specific funding determination**. Without a property-specific funding determination provided for in §101(39)(C), these specified RCRA facilities can not receive grant or loan funding.

When making this determination, EPA assesses whether Brownfields funding for assessment or cleanup activities will:

- ensure protection of human health and the environment; **and** either
- promote economic development, or
- promote the creation, preservation, or addition to parks, greenways, undeveloped facility, other recreational facility, or other property used for non-profit purposes.

***Q9. Are former military installations that have been closed and subsequently turned over to local and/or state governments or non-profit organizations eligible for funding under the FY07 guidelines?***

A9. Yes. Generally, former military installations that are no longer owned or under the custody or control of the U.S. government, including properties that have been closed and subsequently turned over to governments or non-profit organizations may be eligible for brownfields funding. **For example, the following types of facilities may be eligible for brownfields funding:**

1. Privately-owned, Formerly Used Defense Sites (FUDS)
2. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties.
3. Other former federal properties that have been disposed of by the U.S. government.

Facilities owned by, or under the custody or control of the federal government are not eligible for brownfields funding with the exception of land held in trust for an Indian tribe. Applicants should contact their Regional Brownfields Coordinator for additional information.

## **II. General Application Information**

***Q10. What were the results of the 2006 competition process?***

A10. EPA was pleased to receive nearly 700 proposals for Brownfields grants in FY 2006. Continued national interest in the new law resulted in a highly competitive selection process, with a total of 292 grants announced nationwide in FY 2006.

***Q11. How do I submit my application and what is the deadline for submission in FY2007?***

A11. Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically through Grants.gov. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by December 8, 2006. Applicants must submit their proposal(s), including all attachments, to Environmental Management Support,

Inc. (contractor to EPA), and one copy to the appropriate EPA Regional Brownfields Contact listed in Appendix 1 of the guidelines. Additional submission instructions are contained in Section IV, "Proposal and Submission Information."

- The proposal(s) must be sent to the following address via U.S. Postal Service or Commercial Delivery Service: Environmental Management Support, Inc., Attn: Mr. Don West, 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910. Phone 301-589-5318.
- Applicants may submit their proposals electronically through Grants.gov; proposals submitted through Grants.gov must be received by midnight EDT on **December 8, 2006**. Please refer to Appendix 5, "Grants.gov Application Instructions for Brownfields," for specific instructions for use of Grants.gov. **Note: There is a registration process to complete for electronic submission via Grants.gov, which may take a week or more to complete.**

***Q12. How have the Brownfields Assessment, Revolving Loan Fund and Cleanup Grant proposal guidelines changed in FY2007?***

A12. EPA estimates that \$72 million will be available to award approximately 200 grant awards, contingent upon the availability of funds in FY 2007.

Criteria and prohibitions, which are statutorily based, remain the same in FY 2007.

Important changes in the FY 07 guidelines include the following:

- The Community Notification threshold criterion is now the Pre-Award Community Notification ranking criterion. Responses to this section are required as part of the applicant's proposal and will be ranked accordingly. Actual notification need not take place prior to selection. However, EPA will require the execution of Community Notification plans prior to grant award and no later than September 14, 2007.
- An eligible entity applying for cleanup grants may not apply for cleanup funding at more than three sites (down from five in past years).

EPA will not consider proposals that fail to comply with certain mandatory provisions of the guidelines. The Agency strongly urges applicants to carefully read the guidelines.

***Q13. Can I submit my proposal electronically?***

A13. Applicants may submit proposals electronically, via <http://www.grants.gov>. Proposals submitted through Grants.gov must be received by December 8, 2006, midnight EDT to receive consideration.

The electronic submission of your application must be made by an official representative of your institution who is registered with Grants.gov. For more information, go to <http://www.grants.gov>.

**Note that the registration process may take a week or longer.**

EPA strongly encourages applicants to review Appendix 5 of the Brownfields Grant guidelines for specific instructions on submitting proposals electronically via [Grants.gov](http://www.grants.gov).

***Q14. What is the grant application process in Fiscal Year 2007?***

A14. The process for applying for assessment, revolving loan fund and cleanup grants is a one step process as discussed in the guidelines (<http://www.epa.gov/oswer/grants-funding.htm#epa-oswer-obcr-07-01>).

Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically through Grants.gov. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by December 8, 2006. Applicants must send one complete copy of the proposal(s), including attachments, to Environmental Management Support, Inc. (contractor to EPA), and one copy to the appropriate EPA Regional Brownfields Contact listed in Appendix 1 of the guidelines. Additional submission instructions are contained in Section IV of the announcement. **Proposals received via Grants.gov or postmarked after the respective dates and times specified above will not be considered. Facsimile delivery of proposals and e-mailed submissions are not permitted and will not be considered.**

Prior to **December 8, 2006**, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking** criteria.

Proposals received in response to the guidelines will initially be reviewed by the appropriate regional office to determine compliance with the Section V Threshold Criteria. Each proposal by grant type (assessment, RLF, and cleanup), which successfully meets all of the applicable threshold criteria for that grant type, will then be evaluated by national panels chosen to address the range of activities associated with the National Brownfields Program. The evaluation panels, composed of EPA Headquarters and Regional staff and other federal agency representatives, **will base their evaluations solely on the applicable ranking criteria described in Section V of the guidelines** that apply to the different grant types and will assign an evaluated point score..

Funding requests for each grant type will be ***evaluated and ranked separately***.

Completed evaluations will then be referred to a Selection Official, who is responsible for further consideration of the proposals and final selection of grant recipients. Proposals will be selected for award by this Official based on their evaluated point scores and other statutory and policy considerations (see below).

In addition to considering the evaluation of proposals based on the factors identified above for the type of grant being proposed for, EPA's Selection Official, in making selection recommendations, may consider other factors such as fair distribution of funds between urban and non-urban areas and among EPA's ten Regions; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; whether the proposed project will assist in addressing environmental justice concerns (such as the disproportionate impact on or presence of brownfields sites near low-income and/or minority citizens or disproportionately high and adverse human health or environmental effects on minority populations and low-income populations); compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; whether the applicant is a federally recognized Indian tribe; or whether the applicant is a community with an Official Recognition (OR) from the Department of Justice for its Weed and Seed strategy.

EPA will inform successful proposal applicants in writing.

Funding will be awarded as a cooperative agreement. EPA anticipates substantial involvement with the cooperative agreement recipient. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office.

EPA reserves the right to reject any or all proposals or applications and make no awards.

EPA anticipates that successful applicants will be notified in the Spring of 2007.

For additional information regarding the FY 2007 grant application process for brownfields assessment, revolving loan fund and cleanup grants, contact your EPA Regional Brownfields Coordinator.

***Q15. How do I get help in understanding and responding to the grant proposal guidelines?***

A15. EPA urges applicants to review the grant proposal guidelines carefully and any supplemental information on the EPA brownfields website.

If resources permit, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information.

EPA Regions will respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking** criteria.

Applicants may contact their EPA Regional Brownfields Contact for general information or questions regarding the threshold criteria, including eligibility. A list of EPA Regional Brownfields Contacts and their mailing addresses can be found in Appendix 1 of the guidelines at: <http://www.epa.gov/oswer/grants-funding.htm#epa-oswer-obcr-07-01>.

All proposals will be reviewed and evaluated objectively against the criteria identified in the grant guidelines and ranked based upon their written response. ***Applicants are responsible for making decisions on the content of their proposals.***

***Q16. What is the amount of funding available through individual grants?***

A16. Under the new Brownfields law, an eligible entity may apply for:

- **Assessment Grants.** An eligible entity may submit ***no more than 2 assessment proposals***. An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address a site contaminated by petroleum. For site specific proposals, applicants may seek a waiver of the \$200,000 limit and request up to \$350,000 for a site contaminated by hazardous substances, pollutants, or contaminants and up to \$350,000 to assess a site contaminated by petroleum. Such waivers must be based on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) or petroleum at a single site. Total grant fund requests must not exceed a total of \$400,000 per applicant unless the applicant requests a waiver. Due to budget limitations, no entity may



apply for more than \$700,000 in assessment funding. The performance period for an Assessment Grant is 3 years.

- Revolving Loan Fund Grants. Grants may be awarded up to \$1 million for an initial revolving loan fund (RLF) grant. A coalition of eligible entities may apply together under one application for up to \$1 million per eligible entity. The performance period for a Revolving Loan Fund Grant is 5 years.
- Cleanup Grants. Grants may be awarded up to \$200,000 per site for cleanup. Due to budget limitations, no entity may apply for funding cleanup activities at more than three sites. Applicants must submit a separate proposal for each site. The performance period for a Cleanup Grant is 3 years.

***Q17. Must I 'own' the site when I apply for a Cleanup grant?***

A17. No. However, by statute, cleanup grant recipients and revolving loan fund subgrant recipients must own these sites at the time of grant or subgrant award. For budget purposes, EPA has established a policy that, for cleanup grants, the site must be owned by June 30, 2007 for the FY07 grant cycle. If an applicant does not have sole ownership of the property by that date, EPA will deem that site ineligible for funding under the FY07 grant cycle, and the applicant may reapply in future years. For purposes of grant eligibility and the guidelines only, ownership is fee simple title. Other arrangements may be considered on a case-by-case basis. As noted above, the applicant must have sole ownership of the site by June 30, 2007 to be eligible for the award of the grant.

***Q18. What happens if I am selected for a cleanup grant, but do not obtain sole ownership of the site by June 30, 2007? Will EPA make exceptions?***

A18. In the event that a successful cleanup grant applicant cannot obtain sole ownership of the site by June 30, 2007, the applicant will not be eligible to receive award of the grant. EPA will consider exceptions only in cases in which an officially recognized disaster or national emergency prevents an applicant from obtaining sole ownership by June 30, 2007.

***Q19. If my application is not selected for a cleanup grant under EPA's initial announcement of selections, will the Agency reconsider my application if there are funds available after June 30, 2007, because other applicants did not obtain sole ownership of their sites by that date?***

A19. Yes. EPA will maintain a ranked list of cleanup grant applicants who own the site that is the subject of their application for use in making additional selections with funds available as a result of other applicants not obtaining sole ownership of their property by June 30, 2007. EPA regional offices will contact the cleanup grant applicants the Agency will consider for selection after June 30, 2007. The Agency may also consider geographic distribution and other special considerations when determining which applicants to contact. Please note that to be considered for selection, applicants must have sole ownership of the site that is the subject of their application by June 30, 2007. Applicants may be asked to present documentation of proof of sole ownership. Selection is not guaranteed, and additional funding may not be available.

***Q20. Do tribes "own" tribal trust lands for purposes of brownfields cleanup grants and RLF cleanup subgrants?***

A20. Generally, EPA believes tribes have a sufficient ownership interest in tribal trust lands to "own" such lands for purposes of brownfields cleanup grants and RLF cleanup subgrants. Applicants should contact their Regional Brownfields Coordinator for additional information.



***Q21. Do applicants for brownfields grants (assessment, revolving loan fund or cleanup grant) need to inform their State regarding the submission of a grant proposal to EPA?***

A21. Yes. Applicants (other than a State or tribal environmental authority) must provide a letter from a State or Tribal environmental authority that acknowledges the applicant's planned activities in their grant proposal and if specific sites are identified, eligibility determination on those sites, where appropriate. Only one letter reflecting all proposed activities is needed if the applicant applies for multiple grant types or multiple grants.

***Q22. What is meant by community notification?***

A22. In FY07 the Community Notification threshold criterion is now the Pre-Award Community Notification ranking criterion. Responses to this section are required as part of the applicant's proposal and will be ranked accordingly. Actual notification need not take place prior to selection. However, EPA will require the execution of Community Notification plans prior to grant award and no later than September 14, 2007.

The applicant is responsible for providing community notification and opportunity for public comment about the applicant's plans. Community notification can be conducted by or on behalf of the applicant. The proposal must demonstrate how the applicant was or will be involved in the community notification (ie., attended a public meeting, responded to comments, etc), even if another party acts on behalf of the applicant.

Community notification has been an important facet of the brownfields program since its inception and remains an important element under the new amendments. The applicant must describe how the community was/will be notified. Some examples of community notification include:

- discussing a brownfields proposal during an open government meeting (e.g. city council sessions);
- holding a public meeting;
- placing a public notice in a local newspaper or community bulletin board;
- notifying affected residents door-to-door; and,
- soliciting public comment.

Applicants may describe other methods that were/will be used to notify the community.

Applicants must notify/have plans to notify the community of the FY07 proposal being submitted to EPA, even if the applicant has received an EPA brownfields grant in the past and the community is aware of brownfields projects underway. Similarly, even if an applicant has notified the community regarding a proposal submitted under a previous EPA Brownfields grant competition, the applicant must notify the community of its FY07 proposal.

### **III. Use of Brownfield Grant Funding**

#### **A. General Brownfield Grant Information**

***Q23. If funds have been expended at a site under a cleanup grant, can additional brownfields funding be provided for additional cleanup work at the same site?***

A23. Yes, a cleanup grant recipient may apply for additional funding through a brownfields revolving loan fund. A cleanup grant recipient may also request that a state or tribe conduct additional cleanup with CERCLA 128 State and Tribal Response Program funding. A city/town

or other eligible entity may also apply for a cleanup grant for a site on which a state or tribe has already expended CERCLA 128 funds.

***Q24. How does EPA enforce the requirement for cost sharing for the cleanup and revolving loan fund grants?***

A24. The Agency requires recipients to report on their cost sharing in financial status reports. Recipients must have documentation to support cash and in-kind contributions of labor, material and services for cost sharing expenses to be eligible and allowable. If a recipient fails to provide its agreed upon cost share, EPA may take action to recover all or part of the grant as well as take other enforcement actions authorized by Agency grant regulations.

***Q25. Are Administrative costs eligible for funding under EPA brownfields grants?***

A25. No. The Brownfields law prohibits EPA from reimbursing recipients for administrative costs. Administrative costs include indirect costs even if a recipient has an approved indirect cost rate. Please see Appendix 2 of the Guidelines for further information.

Please note that applicants incur pre-award at their own risk and that EPA is not obligated to reimburse applicants for pre-award costs that are not included in the work plan and budget the Agency approves. EPA has no obligation to reimburse unsuccessful applicant for pre-award costs.

***Q26. If my application is successful, will EPA reimburse me for eligible programmatic costs I incurred prior to the award?***

A26. It depends. EPA may reimburse successful applicants for pre-award costs incurred up to 90 days prior to award, even if the applicant did not request prior approval to incur pre-award costs provided the costs are eligible, allowable, and included in the approved budget and work plan for the grant. For example, costs for contracts are allowable only if the contract was entered into in a manner that complies with the competitive procurement provisions of EPA's grant regulations. Costs incurred more than 90 days prior to award require specific approval of an EPA award official.

Please note that applicants incur pre-award at their own risk and that EPA is not obligated to reimburse applicants for pre-award costs that are not included in the work plan and budget the Agency approves. EPA has no obligation to reimburse unsuccessful applicants for pre-award costs.

***Q27. If I am a successful applicant, will EPA reimburse me for the costs of paying a consultant to prepare my grant application?***

A27. No. Proposal preparation costs are prohibited administrative costs.

***Q28. Can I use brownfields grant funds to purchase environmental insurance?***

A28. Yes. Entities that receive grants or loans to perform characterization, assessment or cleanup of a brownfields site may use a portion of their brownfields grant or loan funds to purchase environmental insurance. This amount must be less than 100 percent of the total grant or loan funds awarded under the Brownfields law. Purchases must be consistent with the applicable OMB Cost Circulars: A-21 is applicable to universities and educational institutions, A-87 is applicable to governmental units, and A-122 is applicable to non-profit organizations.

***Q29. What kind of environmental insurance can I purchase with a brownfields grant?***

A29. There are many different kinds of environmental insurance policies for brownfields sites that companies offer. Typically, these policies cover risks related to cleanup cost overruns, third-party liability, and lender liability. Insurance carriers do not use the same names for these policies, and coverage is generally negotiated to cover site-specific risks. Therefore, successful applicants are encouraged to work closely with EPA to ensure any policy to be purchased with EPA funds does not cover ineligible expenses, including but not limited to:

- paying for a penalty or fine
- paying a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
- paying for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107.

***Q30. The new amendments allow a local government to use up to 10% of its grant funds to develop and implement a brownfields program. As a local government applicant, what program activities can be funded under the 10% provision of the new amendments?***

A30. The new amendments allow a local government to use up to 10% of its grant funds to develop and implement a brownfields program. Under the Brownfields Law, a local government (as defined in 40 CFR Part 31.3, Local Government) may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. **The term local government does not include state or tribal governments but may include, among others, public housing authorities, school districts and councils of governments.** To effectively oversee assessments and cleanups, local governments may use grant funds (within the overall 10 percent limit) for other related program development and implementation activities (e.g., writing local brownfield-related ordinances) described in their EPA approved scope of work.

**B. Assessment Grants**

***Q31. Can I apply for assessment supplemental funds on a non-competitive basis under the new amendments?***

A31. No. There are no provisions for non-competitive supplemental funding for brownfields assessment grants, with the exception of a site specific waiver allowing a recipient to expend up to \$350,000 on a site. See Question 16. However, existing assessment grant recipients can compete for new grants and receive funding within the limits established by the Brownfields law (see earlier question).

***Q32. We have identified a specific site for assessment with our EPA grant. What sort of information should I have available when I ask EPA to determine its eligibility for funding?***

A32. The Guidelines provide information on sites eligible for brownfields funding under CERCLA §104(k) in Appendices 3 and 4. Section V. C. on pp. 20 - 24 outlines the types of information necessary to make an eligibility determination. Below are the types of information that will need to be considered.

**Basic property and grant eligibility information, such as:**

- the property's name and address
- the grant recipient's name
- the type of assessment proposed (Phase I, Phase II, etc.)
- how the property has been used in the past (from today going back to its first known use)
- why the property is thought to be contaminated, especially if it's been vacant for many years
- whether the property is a "brownfield site," as defined by the statute (including whether the property is subject to any of the exclusions to the definition of "brownfield site" and if so, whether it is eligible for a property-specific determination).
- whether the CERCLA Section 107 prohibition applies (i.e., whether you are potentially liable as an owner/operator (current or at the time of disposal), arranger, or transporter).

**Information about the current owner that will be of interest:**

- the current property owner's name
- what your relationship is with the owner and what will be their role in the work that is to be performed
- whether you have access to the property, or if not, how you will obtain access to the property

**If you are the current owner, EPA will also want to know:**

- if and when you conducted All Appropriate Inquiry and whether you are affiliated with a liable party
- whether you can take advantage of a CERCLA liability protection (i.e., are a Bona Fide Prospective Purchaser, a Contiguous Property Owner, an Innocent Land Owner, or not)
- if you are a municipality, how you acquired the property (e.g., foreclosure, donation, eminent domain, purchased, etc.).

**For petroleum sites you will also need to:**

- Obtain a written determination of statutory eligibility by the state LUST contact. (Talk to your project officer for assistance)
- If the state is unable to make the determination, you will need to have available information regarding
  - whether the site is of "relatively low risk" compared to other petroleum-only sites in the state
  - whether there is a viable responsible party that can address the petroleum contamination at the site (whether a party is "responsible" and "viable" is defined in the Guidelines)
  - whether you, the applicant, are potentially liable for cleaning up the site, as defined in the Guidelines  
*(be prepared to provide information regarding whether the party having such legal obligations has adequate financial resources to meet the obligation)*
  - whether the site is subject to an order issued under 9003(h) of the Solid Waste Disposal Act

Please note that some sites may either require a property-specific determination or may not be eligible at all for funding (see Appendix 3, p. 9 of the Guidelines)

***Q33. Does assessment include production of reports including Phase I, Phase II, and the trenching, boring, and testing?***

A33. Yes -- assessment would include the above activities. In general, assessment is the process of evaluating alternatives -- activities that are part of that evaluative process are considered assessment; but once an alternative has been selected, ensuing activities no longer are considered assessment.

***Q34. Does redevelopment planning include obtaining a brownfields covenant not to sue, a feasibility study to use for community involvement, and the legal and project manager costs of rezoning if needed?***

A34. Assessment funding is appropriate for a study on community involvement. Assessment funding is NOT appropriate for costs associated with securing a covenant not to sue nor for rezoning. One definition of planning for assessment purposes is considering end uses for the site, Institutional Controls, community involvement and organizing a design charette.

### **C. Revolving Loan Fund Grants**

***Q35. As an RLF grant recipient, will intra-governmental loans (i.e. loans between parts of the same governmental entity) be allowed under the Brownfields law?***

A35. Yes. RLF recipients may make intra-governmental loans under the new Brownfields law.

***Q36. As an RLF recipient, will intra-governmental cleanup subgrants be allowed under the Brownfields law?***

A36. No. Cleanup subgrants, unlike loans, may not be made by the RLF recipients within the same governmental entity that receives the RLF grant (e.g. one department of a city government cannot "subgrant" to another department of the same governmental entity). However, RLF recipients may choose to apply to EPA separately for a cleanup grant. RLF recipients may also make subgrants to different eligible governmental entities as well as non-profit organizations.

## **IV. Brownfields Liability Issues**

### **A. Tribal Liability**

***Q37. Are tribes considered "potentially responsible parties" (PRPs) and therefore prohibited from using Brownfields grant funds to pay for response costs at a site for which the recipient is potentially liable under CERCLA §107?***

A37. Generally, EPA has not considered tribes to be liable as PRPs under CERCLA and, therefore, they are not subject to the statutory prohibition (however, the other prohibitions on uses of Brownfields funds may still apply). Applicants should contact their Regional Brownfields Coordinator for additional information.

## **B. All Appropriate Inquiries**

### ***Q38. What is “All Appropriate Inquiries” and who conducts “All Appropriate Inquiries” under the Brownfields law?***

A38. The Brownfields Law establishes that site characterizations or assessments conducted with the use of brownfields grants awarded under CERCLA Section 104(k)(2)(B)(ii) must be conducted in accordance with the federal "all appropriate inquiries" standards established under CERCLA and addressed in EPA's final rule setting standards and practices for all appropriate inquiries (70 FR 66070).

All appropriate inquiries also refers to the requirements for assessing the environmental conditions of a property prior to its acquisition, for purposes of establishing certain landowner liability protection under subtitle B of Title II of the Brownfields Law. These landowner liability protections require that a person perform “all appropriate inquiries” into the previous ownership and uses of a property before acquiring title to the property. The landowner liability protections include the bona fide prospective purchaser, innocent landowner, and contiguous property owner provisions of CERCLA (see below).

- To qualify as a bona fide prospective purchaser, a person must meet the criteria set forth in § 107(r) and 101(40) of CERCLA (both threshold criteria and continuing obligations after purchase), purchase the property after January 11, 2002, and must perform all appropriate inquiries prior to purchase. These parties may buy knowing, or having reason to know, of contamination on the property. Please note that brownfields grant applicants that otherwise would meet the requirements for a bona fide prospective purchaser, except for having purchased the property prior to January 11, 2002, are eligible for federal brownfields funding.
- To qualify as a contiguous property owner, a person who owns property that is contiguous or otherwise similarly situated to a facility that is the only source of contamination found on his/her property must meet the criteria set forth in CERCLA § 107 (q)(1)(A). Contiguous property owners must perform all appropriate inquiries prior to purchase and cannot know, or have reason to know, of contamination on the property.
- To qualify as an innocent land owner, a person must meet the criteria set forth in CERCLA § 107(b)(3) and 101(35), perform all appropriate inquiries prior to purchase of a property and cannot know, or have reason to know, of contamination on the property.

Applicants should note that there are continuing obligations after purchase that are relevant to these liability protections.

### ***Q39. What are the federal standards for conducting “All Appropriate Inquiries?”***

A39. As of November 1, 2006, parties must comply with either the standards and practices set forth in the final rule on all appropriate inquiries (40 CFR 312 B see <http://www.epa.gov/brownfields/regneg.htm>) or use the process established in ASTM E1527-05 Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process (available at [www.astm.org](http://www.astm.org)).

***Q40. What are the statutory criteria for conducting "All Appropriate Inquiry"?***

A40. Congress directed EPA to establish, by regulation, standards and practices for conducting all appropriate inquiries. In the Brownfields Law, Congress directed EPA to include, within the standards for all appropriate inquiries, the ten criteria shown below. Each of these criteria is addressed in the final rule establishing federal standards and practices for all appropriate inquiries (70 FR 66070):

- The results of an inquiry by an environmental professional;
- Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility;
- Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed;
- Searches for recorded environmental clean up liens against the facility that are filed under Federal, State, or local law; Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records concerning contamination at or near the facility;
- Visual inspections of the facility and adjoining properties;
- Specialized knowledge or experience on the part of the defendant;
- The relationship of the purchase price to the value of the property if the property was not contaminated;
- Commonly known or reasonably ascertainable information about the property; and
- The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.

**V. Petroleum Brownfields**

***Q41. Can a petroleum brownfields grant be used for the assessment and/or cleanup of hazardous substances?***

A41. No. As a general rule, a petroleum brownfields grant must be used to assess or cleanup sites contaminated with petroleum. However, if the principal purpose of the assessment grant is to assess a site potentially contaminated with petroleum or to clean up a petroleum contaminated site, a petroleum brownfields grant may be used for the incidental assessment and/or cleanup of hazardous substances.

***Q42. What statutory determinations must my state (or EPA) make to assure that petroleum-contaminated sites (or portions of properties contaminated with petroleum) are eligible for brownfields funding.***

A42. For a petroleum contaminated site(s) that otherwise meets the definition of a brownfields site to be eligible for funding, EPA **or the state must determine**:

1. the site is of "relatively low risk" compared with other 'petroleum-only' sites in the state; and
2. there is no viable responsible party; and
3. funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.



In addition, petroleum-contaminated sites must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

With the exception of Tribes, applicants must first request that their state make these determinations. If the state is unable to make the determinations, the applicant may request that EPA make the determinations. For further information see Guidelines Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product.

***Q43. What information must I provide to a state or EPA so that my petroleum contaminated site is eligible for grant funding?***

A43. The Brownfields Law allows certain sites contaminated with petroleum or petroleum product to be eligible for brownfields grant funding. Eligibility will be determined by EPA or the state, as appropriate (See Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product for a description of the eligibility requirements). Because each state has different procedural requirements for making a petroleum determination it is important that the applicant coordinate with its state to adhere to applicable state policies and procedures.

Non-Tribal applicants must provide the information requested below to your state, so that the state can make the necessary determinations on petroleum site eligibility in Appendix 3, part 3.3.2. Include any response to your request received from your state regarding site eligibility with this proposal. If you do not receive a response from your state by the deadline for filing proposals, please indicate this in your proposal cover letter. (Note: You must provide EPA with the date you requested your state to make the petroleum site determinations. EPA will make the petroleum site eligibility determination if a state is unable to do so following a request from an applicant.) **Also in your letter to the state, please request that the state provide information regarding whether it applied EPA's guidelines in making the petroleum determination, or, if not, what standard it applied.**

Tribal applicants must submit the following information with their proposal to EPA. EPA will make the petroleum site eligibility determinations for Tribes.

Provide the following information to your state and to EPA:

1. Identify the current and immediate past owner of the site.
2. Acquisition of Site. Identify when and by what method the current owner acquired the property (e.g., purchase, tax foreclosure, donation, eminent domain).
3. No Responsible Party for the Site. Identify whether the current and immediate past owner dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum-contamination at the site, and whether the current and immediate past owner took reasonable steps with regard to the contamination at the site.
4. Cleaned Up by a Person Not Potentially Liable. Identify whether you (the applicant) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum-contamination at the site, and whether you took reasonable steps with regard to the contamination at the site.
5. Relatively Low Risk. Identify whether the site is of "relatively low risk" compared to other petroleum or petroleum product-only contaminated sites in the state in which the site is located, including whether the site is receiving or using Leaking Underground Storage Tank (LUST) Trust Fund monies.
6. Judgments, Orders, or Third Party Suits. Provide information that no responsible party (including the applicant) is identified for the site through, either:

a judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site; or

an enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site; or

a citizen suit, contribution action or other third party claim brought against the current or immediate past owner, that would, if successful, require the assessment, investigation, or cleanup of the site.

7. Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.
8. Financial Viability of Responsible Parties. For any current or immediate past owners identified as responsible for the contamination at the site, provide information regarding whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate or clean up the site. **Note:** If no responsible party is identified in (c) or (f) above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding.

**If you are not able to provide EPA or the state with all the above information, then your request to the state or EPA for the determination on site eligibility also must include a brief explanation as to why the information requested above is not available.**

***Q44. Can a petroleum brownfields grant be used for the incidental assessment and/or cleanup of hazardous substances?***

A44. Yes. As long as the *principal purpose* of the assessment or clean-up grant is to assess or clean up a site potentially or actually contaminated with petroleum, a petroleum brownfields grant may be used for the incidental assessment and/or cleanup of hazardous substances.

***Q45. If a site is contaminated with petroleum, diesel, and lead from gasoline, can a petroleum grant address all three contaminants?***

A45. Yes. CERCLA § 101(39) (D) (ii)(II)(aa) provides that a brownfield site includes a site that is “contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’ ...” “Diesel” and “lead from gasoline” would fall within the purview of “petroleum or a petroleum product” and thus a site contaminated by those substances would meet the definition of a brownfield site.

***Q46. Can tanks be pulled under a petroleum brownfields assessment grant?***

A46. Maybe. An underground storage tank may be pulled under an assessment grant only if the recipient determines that the tank must be pulled in order to conduct the assessment. The grant recipient is accountable for any decision made to pull a tank and will need to document the reasons for its decision for audit purposes.

***Q47. Can a state or tribe use LUST Trust Fund money from a cooperative agreement to pay for its preparation of its own Brownfields/petroleum application under the CERCLA § 104(k)?***

A47. Not as a direct cost. Under CERCLA § 104(k)(4)(B)(i)(III) administrative costs may not be charged to brownfields grants. OMB Circular A-87, Appendix B, Item 34 requires EPA approval for states to charge proposal preparation costs directly to grants. EPA considers the costs of preparing Brownfields grants proposals to be an administrative cost. In accordance with OMB Circular A-87, Attachment A, Paragraphs C 3.c. and F. 3.b. administrative costs that are not recoverable under one Federal grant *cannot be shifted to another Federal grant* and EPA cannot grant approval for a state or tribe to charge the costs of a competitive brownfields grant proposal as direct costs. Proposal preparation costs may be allowable as part of a state's indirect cost pool without EPA approval under OMB Circular A-87. States would then need to follow their internal policies and procedures to determine whether proposal preparation costs may be included in their indirect cost calculations.

***Q48. Can a state or tribe use LUST Trust Fund money as a direct cost under its RCRA § 9003(h) grant to pay for providing advice, technical assistance, or (in the case of states) making determinations related to another eligible entity or nonprofit organization's brownfields application?***

A48. It depends. As a threshold matter, under the LUST Trust Fund, the Brownfields application *must be for corrective action for releases of petroleum from federally regulated USTs*. Activities a state carries out in connection with applications for non-petroleum, non-corrective action activities and/or for non-federally regulated USTs would not be an eligible cost under a LUST cooperative agreement and would not qualify for financial support from the LUST Trust Fund. For example, assisting an eligible entity or non-profit organization apply for a brownfields hazardous substance grant would not be an eligible use of the LUST Trust Fund under RCRA § 9003(h).

However, providing advice and assistance to applicants for Brownfields/petroleum grants, including a state making determinations under CERCLA § 101(39)(D)(ii)(II)(bb), is a legitimate use of the LUST Trust Fund because it is an eligible cost under RCRA § 9003(h) associated with corrective action for petroleum releases. The Region awarding the grant would have to examine whether EPA's LUST Trust Fund cooperative agreement with the state allows for this type of activity within its scope of work. If the activity is within the scope of work, it would be eligible as a direct cost.

***Q49. Can a state or tribe use CERCLA § 128 grant funds for its petroleum response program?***

A49. Yes. EPA December 12, 2006, Guidance for CERCLA § 128 funding provides that states and tribes may use CERCLA § 128 grant funds to establish and enhance their response programs even if those programs address petroleum contamination. States and Tribes may also use this grant funding to conduct site specific assessment and cleanup at petroleum sites that meet the definition of a brownfields site at CERCLA § 101(39)(D)(ii)(II), subject to certain conditions and restrictions in the Guidance. Please note that petroleum related activities must be in the EPA approved scope of work for the CERCLA § 128 grant for the costs to be allowable.

## **VI. Brownfields and Public Health**

***Q50. What criteria for petroleum site eligibility will EPA or a state use when a recipient of a community wide assessment grant or a revolving loan fund capitalization grant requests an eligibility determination on a site that was not specified in the EPA approved scope of work?***

A50. EPA, and states that choose to use the Agency's criteria for making petroleum site eligibility determinations, will use the brownfields grant guidelines in effect at the time the recipient requests a site eligibility determination in deciding whether grant funds may be used at a petroleum site that has not previously been determined to be eligible.

EPA issues brownfields grant guidelines on an annual basis. The guidelines contain EPA's current interpretation of CERCLA § 101(39)(D)(ii)(II) and related policies on petroleum site eligibility and site eligibility is determined at the time the recipient selects the site for assessment or a loan or subgrant. For example, suppose EPA awarded the recipient a community wide petroleum brownfields assessment grant in the fiscal year 2005 competition, and the recipient identifies a potential petroleum site for assessment in fiscal year 2007. When the recipient asks the Agency to determine whether the site is eligible, EPA would use the version of Appendix 3, Information on Sites Eligible for Brownfields Funding Under CERCLA 104(k), the Agency issued for the fiscal year 2007 brownfields grant competition to determine whether the site is eligible for funding.

***Q51. Can brownfields grant funds be used to assess or clean up sites contaminated with PCBs?***

A51. Yes. All portions of properties potentially contaminated with PCBs may be eligible for brownfields site assessment, cleanup and revolving loan fund grants (without a property-specific determination), except where EPA has initiated an involuntary action to address PCB contamination at the facility or a portion of a facility. In cases where EPA has initiated an action under the Toxic Substances and Control Act against a property owner to address the illegal disposal of PCBs, the property still may be eligible for brownfields funding if an applicant can demonstrate that the funding will ensure protection of human health and the environment and promote either economic development or the creation or preservation of greenspace.